Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	File No. EB-04-IH-0518
	)	
	)	
Global Teldata II, LLC	)	NAL/Acct. No.200632080005
	)	
	)	
	)	FRN No. 0010-8659-96
	)	

ORDER OF FORFEITURE

Adopted: April 18, 2007 **Released: May 3, 2007**

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of $236,774 against Global Teldata II, LLC ("Global Teldata"). Following the Notice of Apparent Liability and Order the Commission issued on October 31, 2005,[1] we find that Global Teldata willfully and repeatedly violated section 64.1195 of the Commission's rules by failing to register with the Commission until November 17, 2004,[2] and section 54.711(a) of those rules by failing to submit certain Telecommunications Reporting Worksheets ("Worksheets") prior to November 17, 2004.[3] In addition, we find that Global Teldata willfully and repeatedly violated section 254(d) of the Communications Act of 1934, as amended (the "Act"), and section 54.706(a) of the Commission's rules by failing to contribute to the Universal Service Fund ("USF") in 2004 and early 2005.[4]

II. BACKGROUND

A. Obligations to Register, File Periodic Revenue Information, and Contribute to the USF

2. The facts and circumstances surrounding this case are set forth in the *NAL*, and need not be reiterated here at length. Global Teldata began operations on April 1, 2003 as a reseller of local

[1] *See Global Teldata II, LLC*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17264 (2005) ("*Global Teldata NAL*" or "*NAL*").

[2] 47 C.F.R. § 64.1195.

[3] *Id*. at § 54.711(a).

[4] 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

exchange service and intrastate, interstate, and international interexchange service.[5]

3. Both the Act and the Commission's rules impose a number of obligations on providers of interstate telecommunications services, including resellers such as Global Teldata and providers of interconnected Voice over Internet Protocol (VoIP). These carriers must register with the Commission, report information, and contribute to the USF and, in most cases, other Commission programs.[6] Section 64.1195(a) of the Commission's rules first requires all carriers that provide, or plan to provide, interstate telecommunications services to register with the Commission by submitting certain information on FCC Form 499-A, the annual "Telecommunications Reporting Worksheet."[7] The Commission created this requirement to establish "a central repository of key facts about carriers" in order to monitor the entry and operation of such providers to ensure, among other things, that they are qualified, do not engage in fraud, and do not evade oversight.[8]

4. The Commission requires carriers to provide revenue information on FCC Form 499, Telecommunications Reporting Worksheet, on a periodic basis, and the administrators use that information to determine each carrier's universal service and other contributions.[9] In 2001, the Commission modified its reporting requirements for the universal service program to require carriers to

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[5] *See* Letter from Darius B. Withers, Counsel to Global Teldata II, LLC, to Gerald H. Chakerian, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated November 17, 2004 ("November 17, 2004 LOI Response") at 1. Global Teldata II, LLC was formed in a corporate reorganization, effective April 1, 2003, of a predecessor entity which also had never registered with the Commission.

[6] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); 47 C.F.R. § 54.706(a); *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) (*2006 Contribution Methodology Order*).

[7] 47 C.F.R. § 64.1195.

[8] *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report & Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024, ¶ 159 (2000).

[9] 47 C.F.R. § 54.711. Pursuant to the *de minimis* exception, contributors that owe less than $10,000 to the USF in any given year are not required to contribute to the fund or file Worksheets (annual or quarterly) for that year for purposes of the USF. 47 C.F.R. § 54.708. (*See* note 11, *infra*, on quarterly reporting.) Based on Global Teldata's reported revenue for 2003 as reported in its 2004 Form 499-A, it was a *de minimis* carrier in 2003. Even though the *de minimis* exception excuses carriers from the requirements for USF purposes, however, the rules still require carriers such as Global Teldata to file annual Worksheets for purposes of other regulatory programs, such as the Telecommunications Relay Service ("TRS"). *See* 47 C.F.R. § 64.604(c)(5)(iii)(B) (requiring common carriers to submit Worksheets for the TRS Fund); s*ee* *Wireline Competition Bureau Reminds De Minimis Telecommunications Providers of Certain FCC Registration, Reporting, and Contribution Requirements*, Public Notice, WC Docket No. 06-122 (WCB rel. Jan. 31, 2007).

file not only an Annual Worksheet,[10] but also to file a Worksheet each quarter projecting their interstate and international revenue for the upcoming quarter and providing their interstate and international revenues from the previous quarter.[11] The projected revenue information provided on the Quarterly Worksheets determines each carrier's contribution to the universal service fund on a quarterly basis, with a yearly true-up using the Annual Worksheet.[12]

5. Section 254(d) of the Act, section 54.706(a) of the Commission's rules, and Commission Orders further require all telecommunications carriers that provide interstate telecommunications services, including resellers such as Global Teldata and providers of interconnected VoIP, to contribute to the USF.[13] This obligation is the product of a contribution factor and some portion of a carrier's revenue. The Universal Service Administrative Company ("USAC") is the administrator of the USF and bills contributors monthly, based on the information they report on FCC Form 499-Q, with an annual "true-up"as noted above.[14]

B. The Commission's Investigation

6. On March 30, 2004, the audit staff of the Enforcement Bureau ("Bureau") sent a letter to Global Teldata requesting information pertaining to Global Teldata's compliance with section 64.1195 of the Commission's rules.[15] Global Teldata responded on May 25, 2004, briefly stating that it believed it was *de minimis* for USF purposes in 2003.[16] Because Global Teldata had not registered with the FCC, the

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[10] *See FCC Form 499-A Telecommunications Reporting Worksheet − Annual Filing,* http://www.fcc.gov/Forms/Form499-A/499a-2003.pdf (April 2003) ("Annual Worksheet").

[11] *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) ("*Quarterly Reporting Order*"). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e*., February 1, May 1, August 1, and November 1). *See Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & n.32. *See FCC Form 499-Q Telecommunications Reporting Worksheet − Quarterly Filing for Universal Service Contributors*, http://www.fcc.gov/Forms/Form499-Q/499q.pdf (April 2003) ("Quarterly Worksheet").

[12] *See* 47 C.F.R. § 54.709(a); "Telecommunications Carrier Registration Information Now Available Online," Public Notice, DA 01-2465 (rel. Oct. 29, 2001). The Commission modified its rules on carrier contributions to the universal service fund. *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review − Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("*Interim Contribution Order*"). As of April 1, 2003, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historic gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-74, ¶¶ 29-39.

[13] *See* 47 U.S.C. § 254(d). *See* note 6, *supra*.

[14] *See* 47 C.F.R. § 54.706(a).

[15] *See* Letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Global Teldata II, LLC, dated March 30, 2004 ("March 30, 2004 Audit Letter").

[16] *See* E-mail from Erin R. Swansiger, Counsel to Global Teldata II, LLC, to Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated May 25, *(continue…)*

Bureau issued a letter of inquiry ("LOI") to it on October 28, 2004, which directed the company to submit a sworn written response relating to its apparent failure to comply with section 64.1195 of the Commission's rules, among other things.[17] In its November 17, 2004 LOI Response, Global Teldata again stated that it believed it was *de minimis* for USF purposes in 2003 and that it was unaware it must file for the other programs notwithstanding a *de minimis* USF obligation.[18] In addition, Global Teldata represented that its final revenue figures for January-October 2004 of $204,016 exceeded for the first time the *de minimis* threshold for USF contributions.[19] Global Teldata also stated that, through a billing software package provided by a third-party vendor, it automatically billed and collected partial payments for the USF from its end-user customers.[20]

7. On November 17, 2004, the same day that Global Teldata filed its response to the LOI, it filed a seven-month late 2004 Form 499-A (due April 1, 2004) and an initial quarterly Worksheet for the first quarter of 2005 (due November 1, 2004).[21] As a result of these filings, USAC began invoicing Global Teldata for its USF obligations, and the company began paying current invoiced monthly USF contributions on February 14, 2005. It also paid a total of $53,548 in several monthly installments for the overdue USF assessment attributable to 2004.

8. On August 29, 2005, however, in response to a supplemental LOI,[22] Global Teldata disclosed for the first time that its actual international and interstate telecommunications revenue from end users for January to October 2004 had been $722,368, over three times the amount of $204,016 originally reported in the November 17, 2004 LOI Response.[23] The revised amount was larger because Global Teldata did not previously include USF charges and subscriber line charges that it had been recovering automatically from its customers through line items in a billing software package that it had obtained from a third party.[24] In addition, Global Teldata reported that cumulative interstate end user

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2004. *See* note 8, *supra*, regarding the *de minimis* exception for filing if a carrier's USF contribution in any given year is less than $10,000.

[17] *See* Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Erin R. Swansiger, Counsel to Global Teldata II, LLC, dated October 28, 2004 ("October 28, 2004 LOI").

[18] November 17, 2004 LOI Response (Inquiry Nos. 7-11).

[19] *See id*. (Inquiry Nos. 7-8) and Exhibits E & F. These responses indicated that cumulative telecommunications revenue from January to October 2004 was $204,016.

[20] *See id*. (Inquiry No. 14) and Exhibit G. Global Teldata does not state whether it was specifically aware of these charges and revenues.

[21] *See id*. (Inquiry Nos. 7-8) and Exhibits E & F. The Form 499-A was apparently intended to serve both as a late-filed registration that had been due since the beginning of business on April 1, 2003, and as a late-filed annual 2004 Form 499-A Worksheet for 2003 that had been due since April 1, 2004.

[22] Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Darius B. Withers, Counsel to Global Teldata II, LLC, dated August 17, 2005.

[23] *See* Letter from Darius B. Withers, Counsel to Global Teldata II, LLC, to Gerald H. Chakerian, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 29, 2005 ("August 29, 2005 LOI Response"). *See* note 14, *supra*, regarding its previously reported revenues.

[24] *See* August 29, 2005 LOI Response at 1 and Exhibit A. Global Teldata's first quarterly Worksheet that was late-filed on November 17, 2004 contained this same error. The subscriber line charge (also called end user common *(continue…)*

telecommunications revenue for the first two months of 2004 was $128,785, an amount already in excess of the annual *de minimis* level.

9. The Commission released the *Global Teldata NAL* on October 31, 2005, concluding that Global Teldata apparently violated section 254(d) of the Act[25] and sections 54.706(a), 54.711(a), and 64.1195 of the Commission's rules[26] by willfully and repeatedly failing: (1) to register with the Commission until November 17, 2004; (2) to file one quarterly Worksheet due on November 1, 2004; and (3) to make three contributions to the USF due on November 15 and December 15, 2004, and January 15, 2005.[27] The Commission proposed a total forfeiture of $236,774 for these apparent willful and repeated violations.[28]

10. Global Teldata filed its response to the *NAL* on November 29, 2005.[29] Global Teldata argued that the failure to register was not repeated since it occurred only on April 1, 2003, the date when it commenced interstate telecommunications operations without registering, and this violation is therefore beyond the applicable one-year limitations period in the forfeiture provisions of section 503(b)(1)(B) of the Act.[30] Global Teldata also claimed the proposed forfeitures for Global Teldata's failure to timely file its initial Quarterly Worksheet and failures to contribute to the USF should be reduced because a carrier's honest errors in determining the first time it becomes subject to filing and contribution requirements by exceeding the USF *de minimis* threshold involves relatively less culpability than a carrier's errors in making successive filings.[31] Finally, Global Teldata contended a total forfeiture that represents 27 percent of Global Teldata's interstate telecommunications revenue in 2004 is excessive under any measure.[32]

11. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[33] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[34] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[35] and the

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line charge) is a fixed, non-usage sensitive access charge to the end user for the dedicated line from the last local exchange carrier central office to the end user's premises. *See* sections 69.104 and 69.152 of the Commission's rules, 47 C.F.R. §§ 69.104, 69.152.

[25] 47 U.S.C. § 254.

[26] 47 C.F.R. §§ 54.706(a), 54.711(a), 64.1195.

[27] *Global Teldata NAL*, 20 FCC Rcd at 17270, ¶¶ 14-15.

[28] *Id*. at ¶¶ 22-28.

[29] Response of Global Teldata II, LLC, filed November 29, 2005 ("NAL Response").

[30] *Id*. at 3-4. *See* 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(c)(3).

[31] NAL Response at 4.

[32] *Id*.

[33] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[34] 47 U.S.C. § 312(f)(1).

[35] H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

Commission has so interpreted the term in the section 503(b) context.[36] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[37] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[38] The legislative history to section 312(f)(2) of the Act clarifies that this definition of "repeated" applies to both sections 312 and 503(b) of the Act, in the same way that the definition of "willful" does.[39] To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.[40] The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[41]

12. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to $130,000 for each violation or each day of a continuing violation, up to a statutory maximum of $1.325 million for a single act or failure to act.[42] In determining the appropriate forfeiture amount, the Commission considers the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[43]

III. DISCUSSION

13. As discussed below, we find by a preponderance of the evidence that Global Teldata willfully and repeatedly engaged in all of the violations described in the *Global Teldata NAL*. More specifically, we find that Global Teldata willfully and repeatedly violated section 64.1195 of the Commission's rules by failing to register with the Commission; section 54.711(a) of the Commission's rules by failing to file one Quarterly Worksheet on a timely basis; and section 254(d) of the Act and section 54.706(a) of the Commission's rules by failing to contribute to the USF on a timely basis on three occasions.

14. In the *Global Teldata NAL*, the Commission proposed a forfeiture of $236,774 for Global Teldata's apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a), 54.711(a), and 64.1195 of the Commission's rules.[44] The Commission proposed a forfeiture of $100,000

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[36] *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

[37] *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage) ("*Callais Cablevision, Inc*.").

[38] *Callais Cablevision, Inc.,* 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.,* 6 FCC Rcd at 4388, ¶ 5.

[39] *See A-O Broadcasting Corporation*, Forfeiture Order, 18 FCC Rcd 27069, 27072, ¶ 12 & n. 16 (2003); *recon. denied*., 20 FCC Rcd 756 (2005) ("*A-O Broadcasting*") (radio broadcaster committed continuing violations for failure to install certain equipment and to maintain a main studio for five weeks).

[40] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[41] *See, e.g., SBC Communications, Inc*., Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

[42] 47 U.S.C. § 503(b)(2)(B).

[43] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶ 27; 47 C.F.R. § 1.80(b).

[44] *Global Teldata NAL*, 20 FCC Rcd at 17270-73, ¶¶ 14-22.

for Global Teldata's failure to register with the Commission within the one-year period preceding the issuance of the *NAL*. For Global Teldata's apparent failure to timely file Telecommunications Reporting Worksheets, the Commission proposed a forfeiture of $50,000 for the one instance of non-filing within the one-year period preceding the *NAL* (*i.e.,* the filing due November 1, 2004). Finally, for Global Teldata's apparent failure to pay universal service contributions, the Commission proposed a base forfeiture amount of $20,000 for three months of nonpayment within the one-year period preceding the *NAL* (*i.e.*, the payments due on November 15 and December 15, 2004, and January 15, 2005), for a base forfeiture of $60,000, and then added one-half of the total unpaid universal service contributions ($26,774) to the base forfeiture of $60,000, for a total proposed forfeiture of $86,774. These forfeiture calculations were consistent with other, similar actions the Commission has recently taken involving apparent USF violations. As explained below, we reject Global Teldata's arguments to cancel or reduce the amount of the forfeiture, and therefore impose the full forfeiture of $236,774.

A. Global Teldata's Continuous Violation of the Requirement to Register Was Within the Applicable One-Year Limitations Period

15. In the *NAL*, the Commission found that Global Teldata was apparently liable for failing to register pursuant to section 64.1195. Global Teldata contends that the violation for failure to register occurred on April 1, 2003, the date when it commenced interstate telecommunications service without registering, and that the violation was not repeated thereafter. Accordingly, it argues that this singular violation did not occur within the one-year limitations period for forfeiture actions set forth in section 503(b)(6) of the Act, in this case October 31, 2004 (*i.e.*, one year before the *NAL* was issued on October 31, 2005).[45] In particular, Global Teldata contends that because section 503(b)(1)(B) makes an entity liable for a forfeiture only when it has "willfully or *repeatedly*" (emphasis added) violated the Act or a Commission order or rule, that provision does not make an entity so liable for engaging in a *continuing* violation. Global Teldata appears to argue that if Congress had intended in section 503 for "repeated" to mean "an act that continues for more than one day" as opposed to its "plain meaning [of] an act that is committed more than once," Congress would have explicitly so stated, as it has in section 312(f)(2) of the Act.[46] Global Teldata therefore concludes that, because the Commission's use of an overbroad definition of "repeated" as including a continuing act was improper under section 503, its failure to register on April 1, 2003 did not occur within a year before the issuance of the *NAL* and the alleged violation is therefore beyond the applicable limitations period for this forfeiture.[47]

16. We reject this argument because Global Teldata misstates and misinterprets the clear language and legislative history of these statutes and their application to the present proceeding. Section 312(f)(1) defines "willful" as "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate" the law. Section 312(f)(2) defines "repeated" as "the commission or omission of [an] act more than once or, if such commission or omission is continuous, for more than one day." In 1982, Congress extended both of the definitions of these respective terms to section 503. After discussing the definition of "willful," the Conference Report states:

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[45] NAL Response at 3 (citing 20 FCC Rcd at 17269, ¶ 13). Section 503(b)(6) of the Act states: "No forfeiture penalty shall be determined or imposed against any person under this section if … the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability." 47 U.S.C. § 503(b)(6)(B).

[46] NAL Response at 3. As indicated above, section 312(f)(2) of the Act states: "The term 'repeated', when used with reference to the commission or omission of an act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

[47] *Id*.

> 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be "continuous" would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms in Midwest Radio-Television, Inc., 45 F.C.C. 1137 (1983).[48]

Thus, Congress clearly intended that the definition of "repeated" in section 312 include a continuous violation lasting for more than one day and that such a repeated violation would subject a violator to the section 503 forfeiture provisions. This interpretation is also confirmed by the plain language of section 503(b)(2)(B) of the Act, which authorizes the Commission to assess an individual forfeiture for each violation or *each day of a continuing violation*," up to the statutory maximum for a single act or failure to act.[49]

17. Applying this standard to the instant case, we conclude that Global Teldata's failure to register was continuing and, therefore, "repeated" within the meaning of section 503. Global Teldata's failure to register left it outside the purview of the Commission and USAC on a continuing basis each day it provided service without registering after April 1, 2003. These negative consequences continued through the Bureau's first knowledge of Global Teldata's non-compliance through the 2004 audit and ended only when the company finally registered with the Commission on November 17, 2004. Accordingly, we find Global Teldata's violation of section 64.1195 of the Commission's rules occurred within the one-year limitations period before the *NAL* was issued on October 31, 2005.

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[48] H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982). *Midwest Radio-Television, Inc*., Memorandum Opinion and Order, 45 F.C.C. 1137 (1983), *rev'd on other grounds*, *United States v. Midwest Radio-Television, Inc.*, 249 F. Supp 936 (D. Minn. 1966), concerned a radio licensee's failure to announce paid sponsorship of certain broadcast material, in violation of section 317(a) of the Act, 47 U.S.C. § 317(a). The Commission imposed two forfeitures for two broadcasts of the same material within 36 minutes of each other, *i.e.*, on the same day. In commenting on the general meaning of the then-existing version of "repeated violation" in section 503(b), the Commission stated that this provision allows "a separate forfeiture for each day during which repeated violations occur or an uninterrupted continuing violation continues." *Id*., 45 F.C.C. at 1142, ¶ 17. *See also Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 8 (discussing the parallel application of the definition of "willful" violations).

[49] 47 U.S.C. § 503(b)(2)(B) (emphasis added). Moreover, prior Commission decisions have recognized that both definitions in section 312(f) apply to section 503(b) in a parallel manner, making explicit references to the legislative history noted above. *See*, *e.g.*, *A-O Broadcasting Corporation*, note 34, *supra*. Similarly, these cases affirm that an on-going failure to comply with regulatory requirements may constitute a "continuing" and, therefore, "repeated" violation for purposes of section 503. For example, in *Western Wireless*, the Commission issued an NAL against a cellular carrier for willful and continuing rule violations by failing to obtain authorization regarding the environmental impact of its antenna structure for five years, beginning from the time of construction and continuing through the date of the decision. *Western Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 10319, 10325-26, ¶¶ 15, 19-20 & nn. 55-56 ("*Western Wireless*"); *modified on other grounds*, 20 FCC Rcd 1245 (2004). Moreover, in a context specifically analogous to Global Teldata's limitations argument here, the Commission stated in *Western Wireless* that "*this violation has continued into the one-year limitations period for a forfeiture*." *Id*., 18 FCC Rcd at 10325, ¶ 15 (emphasis added).

B. The Forfeiture Amounts Are Not Excessive

1. Failure to Timely File the Initial Quarterly Worksheet

18. The Commission proposed a $50,000 forfeiture for Global Teldata's failure to timely file one Worksheet. Global Teldata admits that it filed the Worksheet late, and the Worksheet reported incorrect revenues, but raises four arguments as to why the proposed forfeiture should be reduced to $10,000 under the factors enumerated in section 503(b)(2)(D) of the Act.[50] First, it contends that, in the course of normal business practice, it did not learn that it was above the *de minimis* level until November 2004.[51] Second, Global Teldata claims that the initial exclusion of reportable revenues, *i.e.*, revenues from USF and subscriber line charges that it had been recovering through its third-party billing software, was a simple mistake.[52] Third, it also asserts that for a company that has evolved from *de minimis* to covered status, deciding the timing and content of a first Worksheet is a matter of judgment and, thus, honest errors are more likely.[53] Fourth, Global Teldata argues that a reduction is warranted because it has timely filed all worksheets since it first learned that it was above the *de minimis* level.[54]

19. We decline to reduce the forfeiture. Global Teldata and its corporate predecessor have been in the telecommunications industry for years and were on notice of the Commission's reporting and contribution requirements. With respect to its first argument, we are not persuaded by Global Teldata's claim that it did not learn that it had exceeded the *de minimis* level in the course of normal business until November 2004. Even under its original, incorrect computation methodology that excluded USF and subscriber line charges from interstate telecommunications revenues, it should have realized it was approaching the *de minimi*s threshold long before apparent telecommunications revenues reached approximately $200,000 in October 2004.

20. Global Teldata's second assertion, that this incorrect methodology in 2004 was a "simple mistake," is belied by its continued use of that erroneous approach until the August 29, 2005 LOI Response, despite repeated opportunities to re-examine its improper computation methodology and data in the course of preparing two previous LOI responses and several late-filed Form 499s. Throughout this period, its own software-generated billing detail should have alerted it to these issues. Thus, from at least the beginning of 2004, Global Teldata's failures to follow the publicly available Worksheet instructions for these calculations were willful because it made the conscious decision that it did not have to file Quarterly Worksheets.

21. We reject Global Teldata's third argument, that the latitude for error should be greater in the filing of a first Worksheet. Rather, the filing of the first Worksheet is more critical because, like registration, it first brings to the attention of the Commission and USAC that a carrier's revenues are now required to be made part of the Fund.

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[50] *See* paragraph 13, *supra*, regarding section 503(b)(2)(D).

[51] Response to NAL at 4.

[52] *Id*., *see also* paragraph 8, *supra*.

[53] Response to NAL at 4. In this context, Global Teldata incorrectly states that the penalty for late-filing the first required worksheet should not be increased simply because it is the first filing. In fact, the proposed forfeiture of $50,000 is the base forfeiture amount, and there was no upward adjustment.

[54] *Id.*

22. Fourth and finally, we will not reduce the forfeiture for Global Teldata's claim that it has timely filed all current Worksheets since its late registration. Post-investigation corrective measures are not sufficient to avoid enforcement action.[55]

23. Accordingly, throughout the one-year period preceding Global Teldata's first Worksheet filing in November 2004, its repeated failures to recognize its filing obligations weigh decisively against any reduction to the forfeiture. Had Global Teldata been acting responsibly, it would have realized that its revenues exceeded the *de minimis* level, not in October 2004, but much earlier in February 2004. Quarterly Worksheets are due on the first day of February, May, August, and November of each year, and must project a carrier's revenue for the following quarter. Because Global Teldata's revenues exceeded the *de minimis* threshold in February 2004, its first Quarterly Worksheet should have been filed in November 2003. Even if Global Teldata did not in good faith anticipate in late 2003 that its revenues would exceed the *de minimis* threshold in early 2004, by no means should it have missed filing the first Quarterly Worksheet that was due on May 1 after its revenues actually exceeded this threshold in February 2004, let alone the second filing due August 1, 2004. As a result, giving Global Teldata the benefit of the doubt, the filing due November 1, 2004 was no less than the third deadline that the company missed. The *NAL* only assessed a forfeiture for the filing due November 1, 2004 because that was the only one Global Teldata missed within the one-year limitations period preceding the *NAL*. In sum, we reject Global Teldata's four-part argument that the proposed forfeiture should be reduced to $10,000 under the factors enumerated in section 503(b)(2)(D) of the Act.

2. <u>Failure to Pay Three Monthly USF Contributions</u>

24. Global Teldata also argues that the three base forfeiture amounts of $20,000 for each of the three monthly failures to contribute to USF, as well as the single upward adjustment thereto of $26,772, should be reduced to $10,000 for each month without any upward adjustment. While admitting it failed to pay, it states that the total proposed forfeiture of $86,774 "overstates the gravity of the violations" for the same reasons as the proposed forfeiture for failure to file the first Worksheet. According to Global Teldata, a company new to the system can be late simply because of the adjustment from *de minimis* to covered status.[56] Finally, it states that the late payments were not an attempt to avoid its obligations and that it later paid all sums due before issuance of the *NAL*.[57]

25. We reject these arguments for the reasons discussed above. A carrier's correct and timely payments of initial contributions to the USF are a natural extension of its correct and timely registration and submission of initial Worksheets. Like its first reporting obligations, its first payments resulting from the transition from *de minimis* to covered status are all the more important because they first bring the carrier fully into the system. As a long-time participant in the telecommunications industry, Global Teldata should have attended to its regulatory obligations beginning in 2003 by carefully tracking the growth of its interstate telecommunications revenues, examining line items on its own billing statements, and reviewing publicly available instructions for the correct methodology. Moreover, this is not just a question of whether Global Teldata was deliberately attempting to avoid its obligations, but rather whether it conscientiously performed its important affirmative duties. Given the vital regulatory

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[55] *See Communication Services Integrated, Inc.,* Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 17251, 17257, ¶ 16 ("*CSII*"); *AT&T Wireless Services, Inc.,* Forfeiture Order, 17 FCC Rcd 21866, 21870-71, ¶¶ 13-14 (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, ¶ 15 (2001).

[56] Response to NAL at 5.

[57] *Id*.

objectives at issue, we believe that a forfeiture composed of the base forfeiture amount for the three missed payments in the one-year period preceding the *NAL*, plus one-half the total unpaid USF contributions constitutes a fair measure of Global Teldata's violations.[58] Finally, as discussed above, post-investigation payments are not sufficient to avoid enforcement action.

3. The Total Forfeiture Relative to Interstate Revenues Is Not Excessive or Unjust

26. Finally, Global Teldata claims that the total proposed forfeiture of $236,000 is 27 percent of its interstate and international telecommunications revenues in 2004 and is therefore excessive and unjust.[59] We find no merit in this unsupported, blanket assertion. The *NAL* recounts at length the vital policy considerations that underlie the calculation of the proposed forfeiture,[60] and we have revisited some of those concerns in this Order. To the extent Global Teldata is asserting a claim of inability to pay under Commission precedent, we note that the Commission has considered a carrier's gross revenue from all sources, not just interstate telecommunications revenues, as the best indicator of its ability to pay.[61] The proposed forfeiture of $236,774 is less than three per cent of Global Teldata's total revenues for 2004.[62] The Commission has previously found forfeitures of up to nearly eight per cent of a company's revenue acceptable.[63] As a result, Global Teldata's contention that the total proposed forfeiture is excessive and unjust must be rejected.

IV. CONCLUSION

27. Global Teldata withheld payments to a Congressionally-mandated telecommunications program, thereby denying that program of essential funding for an extended period of time. In light of the seriousness, duration and scope of the violations, we find that the total forfeiture of $236,774 proposed in the *NAL* is warranted. As discussed above, this forfeiture amount includes: (1) a total penalty of $100,000 for failing to register with the Commission; (2) a total penalty of $50,000 for failing to file one Worksheet within the year preceding issuance of the *NAL*; and (3) a total penalty of $86,774 for failing to make three monthly universal service contributions within the year preceding issuance of the *NAL*.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Global Teldata II, LLC SHALL FORFEIT to the United States government

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[58] *See*, *e.g.*, *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19904, ¶ 27 (2003); *Inphonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13277, 13287 ¶ 29 (2005); *CSII*, 20 FCC Rcd at 17261, ¶ 27 (2005).

[59] *Id*. Global Teldata has correctly calculated this percentage because it reflects Exhibit A of the August 29, 2005 LOI Response, showing that the true amount of Global Teldata's interstate telecommunications revenue from end users for the entire year 2004 was $868,542.

[60] *See Global Teldata NAL*, 20 FCC Rcd at 17265-67,17271-75, ¶¶ 4-8, 17-19, 21, 24-28.

[61] *See e.g.*, *PJB Communications of Virginia*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088-89, ¶¶ 8-9 (1992).

[62] *See* the August 29, 2005 LOI Response at Exhibit A.

[63] *See Local Long Distance, Inc.*, 15 FCC Rcd at 24389, ¶ 11.

the sum of $236,774 for willfully and repeatedly violating the Act and the Commission's rules.

29. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[64] Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 9116229. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1A625, Washington, D.C. 20554.[65]

30. IT IS FURTHER ORDERED that copies of this ORDER OF FORFEITURE shall be sent by certified mail, return receipt requested, to David G. Crocker, Early, Lennon, Crocker & Bartosiewicz, 900 Commercial Building, Kalamazoo, Michigan 49007-8844.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[64] 47 U.S.C § 504(a).

[65] *See* 47 U.S.C § 1.1914.